

October 9, 2014

The Council on Environmental Quality
ATTN: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight
722 Jackson Place, NW
Washington, DC 20503

Re: Effective Use of Programmatic NEPA Reviews

On behalf of the 6,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Council on Environmental Quality's (CEQ) guidance regarding the Effective Use of Programmatic National Environmental Policy Act (NEPA) Reviews.

ARTBA's membership includes private and public sector members that are involved in the planning, designing, construction and maintenance of the nation's roadways, waterways, bridges, ports, airports, rail and transit systems. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA members undertake a variety of activities that are subject to the environmental review and approval process in the normal course of their business operations. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects. ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects. This document represents the collective views of our 6,000 member companies and organizations.

The recently enacted "Moving Ahead for Progress in the 21st Century" (MAP-21) surface transportation reauthorization law encourages the use of programmatic agreements, which are a means of delineating responsibilities at the beginning of the environmental review and approval process. Ideally, programmatic agreements should strive to specify clear roles and responsibilities for those involved in the project review and approval process, eliminating or reducing duplication of effort. Programmatic agreements should also seek to establish clear expectations for review timeframes and processing options.

According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project from the identification of the project need to the start of construction. According to the same report, it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally funded highway project. This process involves dozens of overlapping state and federal laws, including NEPA, state NEPA equivalents, wetland permits, endangered species implementation, clean air conformity, etc. Often times these procedures mask disparate agendas or, at a minimum, demonstrate an institutional lack of interagency coordination that results in unnecessary delays.



The guidance proposed by CEQ aims to “encourage a more consistent approach to programmatic NEPA reviews so that the analyses and documentation will allow for the expeditious and efficient completion of any necessary tiered reviews.” ARTBA has long advocated for reforms to the NEPA review process centered on reducing unnecessary delay. ARTBA also shares CEQ’s goal of protecting the environment and minimizing the impacts of development.

As a general note, ARTBA has consistently encouraged the use of programmatic agreements, which have been highlighted in the Federal Highway Administration’s (FHWA) “Every Day Counts” program as an effective tool in reducing project delay. ARTBA recommends that as programmatic agreements increase in use, CEQ should examine the agreements and quantify the benefits in terms of time saved. Also, a clearinghouse of programmatic agreements should be created in order to highlight the most effective examples. Such information would be useful in helping to demonstrate to additional states the advantages of this option.

One specific area in CEQ’s guidance which warrants further comment is consideration of project “alternatives” in programmatic agreements. Many times “alternatives” which are raised as part of the NEPA review process pale in comparison to the proposed project and do not have any effect on the problems the original project was designed to address. Also, “alternatives” which are proposed are often touted by interest groups whose main mission is only to delay a project they oppose and are not reflective of the affected community’s views as a whole.

Specific guidelines for “reasonable alternatives” should take into account the cost of the proposed alternative, the actual need or desire for the alternative in the affected community, and the state of technologies involved in developing the alternative. These factors will allow planners to discern which alternatives are actually reasonable and which should not be considered. In the case of highway or road improvement projects, for instance, planners are often forced to consider alternatives such as mass transit or light rail when the area designated for the project is not suited for such measures nor will those measures solve the traffic congestion problems faced by the area in question. This is not to say that these types of alternatives should never be considered, indeed they should be looked at when they are realistic choices. However, planners should not be forced to exhaustively consider a needlessly wide spectrum of measures simply because they are “alternatives” to a given proposal.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of this balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will address those needs. As such, ARTBA appreciates the chance to offer these comments on the use of programmatic agreements and looks forward to working with CEQ to continue to improve the NEPA process.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Peter Ruane". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

T. Peter Ruane
President & C.E.O